

## Commodity Credit Corporation, USDA

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will be published on the FSA Commodity Operations Web site when such opportunities are available.

### § 1402.2 Sales of inventory.

CCC will entertain offers from prospective buyers for the purchase of any commodities owned by CCC, including those commodities that are marketed through commercial, Internet-based marketing services. Various commodities owned by CCC may be offered for sale through commercial, Internet-based marketing services. Interested parties may submit requests for information related to Internet-based commodity sales to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW., Washington, DC 20250-9860.

### § 1402.3 Submission of offers, terms, and conditions.

Offers accepted by CCC will be subject to terms and conditions prescribed by CCC. These terms include, among other things, payment by wire transfer of funds, certified check or cashiers check before delivery of the commodity, removal of the commodity from CCC storage within a reasonable period of time, and in sales that require a commodity to be used for only a specific purpose, documentation that use of the commodity was for only that purpose.

### § 1402.4 Information availability.

The terms and conditions of sale with respect to commodities that are not sold through Internet-based marketing service are available online. Requests for terms and conditions may be addressed to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW., Washington, DC 20250-9860.

### § 1402.5 Late payments.

If payment is not received by CCC within the period specified in the sales contract, interest will be assessed by CCC. If a buyer fails to make arrangements for payment according to the provisions of the contract, CCC retains the right to terminate the sales contract. If CCC terminates the sales contract for default in whole or in part, CCC may offer the commodity for sale

and the original party will be liable to CCC for any losses incurred and damages sustained as a result of the party's failure to timely remit payment for the commodity.

## PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

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AUTHORITY: 15 U.S.C. 714b and 714c; 7 U.S.C. 1445b-2(b).

SOURCE: 54 FR 52878, Dec. 22, 1989, unless otherwise noted.

### § 1403.1 Applicability.

Except as may otherwise be provided by statute, this part sets forth the manner in which the Commodity Credit Corporation (CCC) will settle and collect debts by and against CCC.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66955, Dec. 27, 1991]

### § 1403.2 Administration.

The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC and the Administrator, Farm Service Agency (FSA).

**§ 1403.3 Definitions.**

The following definitions shall be applicable to this part:

*Administrative charges* means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

*Administrative offset* means deducting money payable or held by the United States Government, or any agency thereof, to satisfy in whole or in part a debt owed the Government, or any agency thereof.

*FSA* means the Farm Service Agency of the United States Department of Agriculture (USDA).

*Carrier* means a person or other entity, including but not limited to railroads, motor carriers, ocean carriers or piggyback enterprises, which provide transportation or other transportation-related services for compensation.

*Certified financial statement* means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by the preparer, under penalty of perjury.

*CCC* means the Commodity Credit Corporation.

*Claim* means an amount of money or property which has been determined by CCC, after a notice of delinquency and a demand for the payment of the debt has been made by CCC, to be owed to CCC by any person other than a Federal agency.

*Credit reporting agency* means:

(1) A reporting agency as defined at 4 CFR 102.5(a), or

(2) Any entity which has entered into an agreement with USDA concerning the referral of credit information.

*Debt* means any amount owed to CCC or owed by CCC which has not been satisfied through payment or otherwise.

*Debt record* refers to the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to CCC, FSA, or any other Government

Agency with respect to which collection action is being pursued, and which is maintained in an FSA office.

*Delinquent debt* means:

(1) Any debt owed to CCC that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or

(2) any debt that has not been paid by the date of an initial notification of indebtedness mailed or hand-delivered pursuant to § 1403.4.

*Discharged debt* means any debt, or part thereof, which CCC has determined is uncollectible.

*IRS* means the Internal Revenue Service.

*Late payment interest rate* means the amount of interest charged on delinquent debts and claims. The late payment interest rate shall be determined as of the date a debt becomes delinquent and shall be equal to the rate of interest assessed under the Prompt Payment Act.

*Person* means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, the Federal Government or a State government, or any agency thereof.

*Salary offset* means the deduction of money from the current pay account of a present or former Government employee payable by the United States Government to, or held by the Government for, such person to satisfy a debt that person owes the Government.

*Settlement* means any final disposition of a debt or claim.

*Shipment* means a carload, truckload, containerload, or other conveyance load of freight shipped from one location by one shipper for delivery. Such shipment must move in accordance with the terms of a commercial or ocean bill of lading, or other similar agreement between the carrier and CCC. In the case of export shipments, the agreement may also be between the carrier and a private voluntary organization, foreign government, or the Agency for International Development.

*System of records* means a group of any records under the control of CCC or FSA from which information is retrieved by the name of the individual, organization or other entity or by

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some identifying number, symbol, or other identification assigned to the individual, organization or other entity.

*Withholding* means the taking of action to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66955, Dec. 27, 1991]

### § 1403.4 Demand for payment of debts.

(a) When a debt is due CCC, an initial written demand for payment of such amount shall be mailed or hand-delivered to the debtor. If the debt is not paid in full by the date specified in the initial demand letter, or if a repayment schedule acceptable to CCC has not been arranged with the debtor, the initial demand may be followed by two subsequent written demands at approximately 30-day intervals. The initial or subsequent demand letters shall specify the following:

(1) The basis for and the amount of the debt determined to be due CCC, including the principal, applicable interest, costs and other charges;

(2) CCC's intent to establish an account on a debt record 30 days after the date of the letter, or other applicable period of time, if the debt is not paid within that time;

(3) The applicable late payment interest rate.

(i) If a late payment interest rate is specified in the contract, agreement or program regulation, the debtor shall be informed of that rate and the date from which the late payment interest has been accruing;

(ii) If a late payment interest rate is not specified in the contract, agreement or program regulation, the debtor shall be informed of the applicable late payment interest rate set out in §1403.9.

(4) CCC's intent, if applicable, to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or FSA payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) If not previously provided, the debtor's right to request administrative review by an authorized CCC official, and the proper procedure for making such request. If the request relates to the:

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter, unless a different time period is specified in the contract, agreement or program regulation;

(ii) Appropriateness of reporting to a credit reporting agency, it must be made within 30 days from the date of the letter; or

(iii) Appropriateness of referral to IRS for tax refund offset, it must be made within 60 days from the date of the letter.

(6) The debtor's right to a full explanation of the debt and to dispute any information in the records of CCC concerning the debt;

(7) That CCC maintains the right to initiate legal action to collect the amount of the debt;

(8) That if any portion of the debt remains unpaid or if a repayment schedule satisfactory to CCC has not been arranged 90 days after the due date, an additional interest rate shall be assessed on the unpaid balance of the debt as prescribed in §1403.9(e);

(9) CCC's intent, if applicable, under §1403.16, to report any delinquent debt to a credit reporting agency no sooner than 60 days from the date of the letter;

(10) CCC's intent, if applicable, under §1403.18, to refer any delinquent debt to the IRS, no sooner than 60 days from the date of the letter, to be considered for offset against any tax refund due or to become due the debtor.

(b) When CCC deems it necessary to protect the Government's interest, written demand may be preceded by other appropriate actions.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66955, Dec. 27, 1991]

### § 1403.5 Collection by payment in full.

Except as CCC may provide in accordance with §1403.6, CCC shall collect debts owed to the Government, including applicable interest, penalties, and administrative costs, in full, whenever feasible whether the debt is being collected by administrative offset or by

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another method, including voluntary payment. If a debt is paid in one lump sum after the due date, CCC will impose late payment interest, as provided in §1403.9, unless such interest is waived as provided in §1403.10.

### § 1403.6 Collection by installment payments.

(a) Payments in installments may be arranged, at CCC's discretion, if a debtor furnishes satisfactory evidence of inability to pay a claim in full by the specified date. The size and frequency of installment payments shall:

(1) Bear a reasonable relation to the size of the debt and the debtor's ability to pay; and

(2) Normally be of sufficient size and frequency to liquidate the debt in not more than three years.

(b) Except as otherwise determined by CCC, no installment arrangement will be considered unless the debtor submits a certified financial statement which reflects the debtor's assets, liabilities, income, and expenses. The financial statement shall not be required to be submitted sooner than 15 business days following its request by CCC.

(c) All installment payment agreements shall be in writing and may require the payment of interest at the late payment interest rate in effect on the date such agreement is executed. The installment agreement shall specify all the terms of the arrangement and include provision for accelerating the debt in the event the debtor defaults. A confession of judgment provision may be included in the agreement.

(d) CCC may deem a repayment plan to be abrogated if the debtor fails to comply with its terms.

(e) If the debtor's financial statement or other information discloses the ownership of assets which are not encumbered, the debtor may be required to secure the payment of an installment note by executing a security agreement and financing agreement which provides CCC a security interest in the assets until the debt is paid in full.

(f) If the debtor owes more than one debt to CCC, CCC may allow the debtor to designate the manner in which a voluntary installment payment is to be applied. If the debtor does not designate the application of a voluntary

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installment or partial payment, the payment will be applied to such debts as determined by CCC.

### § 1403.7 Collection by administrative offset.

(a) The provisions of this section shall apply to all debts due CCC except as otherwise provided in this part and part 1404 of this Chapter. This section is not applicable to:

(1) CCC requests for administrative offset against money payable to a debtor from the Civil Service Retirement and Disability Fund and CCC requests for salary offset against a present or former employee of the Federal Government which shall be made in accordance with regulations at part 3 of this title;

(2) CCC requests for administrative offset against a Federal income tax refund payable to a debtor which shall be made in accordance with §1403.18;

(3) Cases in which CCC must adjust, by increasing or decreasing, a payment which is to be paid under a contract in order to properly make other payments due by CCC;

(4) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by statute; and

(5) IRS Notices of Levy which shall be honored in accordance with IRS statutes and regulations.

(b) Debts due CCC may be collected by administrative offset from amounts payable by CCC when:

(1) The debtor has been provided written notification of the basis and amount of the debt and has been given an opportunity to make payment. Such written notification and opportunity includes notice of the right to pursue an administrative appeal in accordance with part 780 of this Title or any other applicable appeal procedures, if not previously provided;

(2) The debtor has been provided an opportunity to request to inspect and copy the records of CCC related to the debt;

(3) The debtor has been notified in writing that the debt may be collected by administrative offset if not paid; and

(4) The debt has not been delinquent for more than ten years or legal action

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to enforce the debt has not been barred by an applicable period of limitation, whichever is later.

(c) Administrative offset shall also be effected against amounts payable by CCC:

(1) When requested or approved by the Department of Justice; or

(2) When a person is indebted under a judgment in favor of CCC.

(d) Debts due CCC from carriers for overcharges shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(2) The period of limitation prescribed at 49 U.S.C. 11706(f) has not expired.

(e) Debts due CCC from carriers for loss or damage shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) Timely demand for payment was made on the carrier;

(2) The carrier has declined payment of the debt without reasonable justification or has ignored the claim; and

(3) The period of limitation prescribed at 49 U.S.C. 11707(e) has not expired.

(f) Any overcharge or loss or damage debt due CCC on which the applicable period of limitation has run may be offset against any amounts owing by CCC to the carrier which are subject to a defense of limitation.

(g) A payment due any person may be offset when there is a breach of a contract or a violation of CCC program requirements, and offset is considered necessary by CCC to protect the financial interests of the Government.

(h) In the case of any procurement contract with CCC which provides for invoicing at the time of shipment with delivery to be made at designated destination points when:

(1) Payment is made to the contractor prior to receipt of evidence of delivery, and

(2) CCC thereafter determines that the Contractor is indebted to CCC because of losses sustained from shortage, damage to or deterioration of the commodity while in transit and prior

to delivery, CCC may offset such indebtedness against amounts due and payable to the Contractor under any other contract with CCC providing the Contractor has not assigned the proceeds of such contract in accordance with part 1404 of this chapter.

(i) CCC may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by (b)(1-3) of this section if:

(1) Failure to take the offset would substantially prejudice CCC's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(j)(1) Debts due any agency other than CCC shall be offset against amounts payable by CCC to a debtor when an agency of the U.S. Government has submitted a written request for offset which is mailed or hand-delivered to the appropriate FSA State office, Kansas City Management Office or Kansas City Commodity Office. Such written request must:

(i) Bear the signature of an authorized representative of the requesting agency;

(ii) Include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with;

(iii) State the name, address (including county), and, where legally available, the social security number or employer ID number of the debtor and a brief description of the basis of the debt, including identification of the judgment, if any.

(iv) State the amount of the debt separately as to principal, interest, penalties, and administrative costs. Interest, if any, shall be computed on a daily basis to a date shown in the request. The amount to be offset shall not exceed the principal sum owed by the debtor, plus interest computed in accordance with the request, and any late payment interest, penalties and administrative costs that have been assessed;

(v) Certify that the debtor has not filed for bankruptcy. If the debtor has filed for bankruptcy, a copy of the order of the bankruptcy court relieving

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the agency from the automatic stay must be included; and

(vi) State the name, address, and telephone number of a contact person within the agency and the address to which payment should be sent.

(2) Unless prohibited by law, the head of an agency, or a designee, may defer or subordinate in whole or in part the right of the agency to recover through offset all or part of any indebtedness to such agency, or may withdraw a request for offset. Notice of such action must be sent to the appropriate FSA office.

(k)(1) After CCC has complied with the provisions of this part, CCC may request other agencies of the Government to offset amounts payable by them to persons indebted to CCC.

(2) In the case of a request to IRS for a tax refund offset, the provisions at § 1403.18 shall apply.

(l)(1) Debts shall be collected by offset in the following order of priority without regard to the date of the request for such collection:

(i) Debts to CCC.

(ii) Debts to other agencies of USDA as determined by CCC.

(iii) Debts to other government agencies as determined by CCC.

(2) In the case of multiple debts involving the same debtor, CCC may, at its discretion, deviate from the usual order of priority in applying recovered amounts to debts owed other agencies when considered to be in the Government's best interest. Such decision shall be made by CCC based on the facts and circumstances of the particular case.

(m)(1) No amounts payable to a debtor by CCC shall be paid to an assignee until there have been collected any amounts owed by the debtor except as provided in this subsection.

(2) A payment which is assigned in accordance with part 1404 of this Chapter by execution of Form CCC-36 shall be subject to offset for any debt owed to CCC or FSA without regard to the date notice of assignment was accepted by CCC or FSA.

(3) A payment which is assigned in accordance with part 1404 of this Chapter by execution of Form CCC-252 shall be offset:

(i) Against any debt of the assignor entered on the debt record of the applicable FSA office prior to the filing of such form with CCC or FSA, or

(ii) At anytime, regardless of the date of filing of such form with CCC or FSA, if the debt which is the basis for the offset arises under the same contract under which the payment is earned by the assignor.

(4) With respect to all other Federal agencies, offset shall be made of any amounts due any other Federal agency which are entered on the debt record of the appropriate FSA office prior to the date the notice of assignment was accepted by CCC or FSA.

(5) Any amount due and payable to the assignor which remains after deduction of amounts paid to the assignee shall be available for offset.

(n) Amounts recovered by offset for CCC and FSA debts but later found not to be owed to the Government shall be promptly refunded.

(o) The debtor shall be notified whenever any offset action has been taken.

(p) Offsets made pursuant to this section shall not deprive a debtor of any right he might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(q) Any action authorized by the provisions of this section may be taken:

(1) Against a debtor's pro rata share of payments due any entity which the debtor participates in, either directly or indirectly, as determined by CCC.

(2) When CCC determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their operation, for the purpose of avoiding the payment of the claim or debt.

(r) The amount to be offset shall not exceed the actual or estimated amount of the debt, including interest, administrative charges, and penalties, unless the Department of Justice requests that a larger specified amount be offset.

(s) Offset action will not be taken against payments when:

(1) The payment represents loan or purchase proceeds for a commodity which is subject to the rights of the holder of a prior valid enforceable lien. However, any amount that exceeds the

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amount of the prior lien shall be available for offset.

(2) A debt has been discharged as provided in § 1403.15.

(3) The amount payable to the debtor is used to satisfy a prior lien on property pledged as collateral for a CCC loan or sold to CCC. However, any amount exceeding the amount of the prior lien shall be available for offset.

(4) CCC determines such action will unduly interfere with the administration of a CCC or FSA program.

(5) The debt has been delinquent for more than ten years or legal action to enforce the debt due CCC is barred by an applicable period of limitation, whichever is later.

(t)(1) Notwithstanding the provisions of paragraph (b) of this section and § 1403.4, with respect to debts which are based upon an unsettled CCC loan, offset action may be taken when the debtor has been:

(i) Provided written notification of the maturity date of the loan and the debtor has not repaid the loan by the maturity date or, in the case of a non-recourse price support loan, has not repaid the loan or forfeited the loan collateral to CCC by the date specified by CCC;

(ii) Notified of CCC's intent to establish an account on a debt record 30 days after the maturity date, or other applicable period of time, if the loan is not settled in accordance with the loan agreement;

(iii) Notified of the right to pursue an administrative appeal in accordance with part 780 of this title if such an opportunity has not been previously provided;

(iv) Provided an opportunity to inspect and copy CCC records related to the debt; and

(v) Notified in writing that the debt may be collected by administrative offset if the loan is not repaid or, with respect to nonrecourse loans only, settled through forfeiture of the loan collateral.

(2) After a claim has been established by CCC with respect to a loan which has not been settled by the date specified in the loan agreement:

(i) In the event CCC takes possession of the collateral which is security for a nonrecourse of recourse loan made in

accordance with parts 1421, 1427, 1434, or 1435 of this chapter, the value of such loan collateral shall be determined by CCC in accordance with the provisions of such parts which are used to determine the settlement value of the collateral. The value of such collateral shall be applied to the claim. Any amount remaining due on the claim must be paid by the debtor.

(ii) In the event CCC takes possession of the collateral which is the security for any other loan, the value of such collateral, as determined by CCC, less any costs incurred by CCC in taking possession and disposing of the collateral, shall be applied to the claim. Any amount remaining due on the claim must be paid by the debtor.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66955, Dec. 27, 1991; 60 FR 43706, Aug. 23, 1995]

### § 1403.8 Withholding.

(a) Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by CCC to ensure that the interests of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States only if CCC determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC;

(2) There is substantial evidence of violations of criminal or civil frauds statutes and criminal prosecution or civil frauds action is of primary importance to program operations of CCC;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of CCC;

(5) The facts available to CCC are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of CCC has been obtained; or

(7) Such action has been requested by the Department of Justice.

(c) Except for debts due CCC or FSA, withholding action by CCC on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

[54 FR 52878, Dec. 22, 1989]

**§ 1403.9 Late payment interest and administrative charges.**

(a)(1) The provisions of this section are applicable to all persons whose debt to CCC becomes delinquent after January 1, 1990, unless the debtor and CCC agree otherwise.

(2) Late payment interest provisions of this section shall not apply:

(i) To debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities shall be charged in accordance with applicable statutes or, if none are applicable, at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent;

(ii) If an applicable statute, regulation, agreement or contract either prohibits the charging of such interest or specifies the interest or charges applicable to the debt involved;

(iii) If the late payment interest is waived by CCC.

(b) CCC will assess late payment interest on the full amount of delinquent debts. For purposes of this section, the term "full amount of the delinquent debt" means the sum of the principal, accrued regular loan interest or accrued program interest, and any other charges which are otherwise due and owing to CCC on the delinquent debt at the time the late payment interest is assessed, except as provided in paragraphs (a)(2) and (d)(3) of this section.

(c) The late payment interest shall be expressed as an annual rate of interest which CCC charges on delinquent debts. The late payment interest rate shall be equal to the higher of the Treasury Department's current value of funds rate or the rate of interest assessed under the Prompt Payment Act, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section.

(d)(1) When a debt results from a statute, regulation, contract or other agreement with specific provisions for

late payment interest and payment due date, late payment interest shall accrue on the amount of the debt from the first day the debt became delinquent, unless otherwise provided by statute.

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor, except that, with respect to debts resulting from price support loans, late payment interest shall begin to accrue from the date on which a claim is established.

(3) The rate of late payment interest initially assessed will be fixed for the duration of the indebtedness, except when a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. CCC may then set a new rate of interest which reflects the late payment interest rate in effect at the time the new agreement is executed. All charges which accrued, but which were not collected under the defaulted agreement, shall be added to the principal to be paid under a new repayment agreement.

(4) The late payment interest on delinquent debts will accrue on a daily basis.

(e)(1) Except as specified in paragraphs (a)(2) and (e)(2) of this section, an additional interest rate of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid 90 days after the date described in paragraph (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to CCC has been agreed upon. Such rate will be assessed retroactively from the date late payment interest began to accrue and apply on a daily basis. Such rate shall continue to accrue until the delinquent debt has been paid.

(2) With respect to debts resulting from price support loans, an additional interest rate of three (3) percent per annum will be assessed on a portion of a debt which remains unpaid 60 days after the date on which a claim was established. Such rate will be assessed



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retroactively from the date of claim establishment and apply on a daily basis. Such rate shall continue to accrue until the delinquent debt has been paid.

(f) CCC shall assess as administrative charges the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

(g) When a debt is paid in partial or installment payments, payments will be applied first to administrative charges, second to additional interest assessed in accordance with paragraph (e) of this section and late payment interest, and third to outstanding principal.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66955, Dec. 27, 1991; 60 FR 43706, Aug. 23, 1995]

### **§ 1403.10 Waiver of late payment interest, additional interest and administrative charges.**

(a) Except for debts resulting from price support loans, CCC shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) CCC may waive the assessment and collection of all or a portion of the additional interest on debts which are appealed in accordance with 7 CFR part 780, or other applicable appeal procedures, from either the date of the appeal or the date of delinquency, as determined by CCC, until the date a final administrative determination is issued. However, with respect to CCC programs administered by the Foreign Agricultural Service, CCC shall waive the assessment and collection of additional interest on debts which are appealed in accordance with 7 CFR part 780, or other applicable appeal procedures, from the date of delinquency until 30 days after the date of the letter informing the appellant of the final administrative determination. The waiver

provisions of the paragraph shall not apply during any period of delay due to:

(1) The appellant's request for a postponement of the scheduled hearing;

(2) The appellant's request for an additional time following the hearing to present additional information or a written closing statement; or

(3) The appellant's failure to timely present information to the reviewing authority.

(c) Assessment and collection of late payment interest, additional interest and administrative charges under this part may be waived by CCC in full, or in part, if it is determined that such action is in the best interest of CCC.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66956, Dec. 27, 1991]

### **§ 1403.11 Administrative appeal.**

If the opportunity to appeal the determination has not previously been provided under part 24 or 780 of this title or any other appeal procedure, a debtor may obtain an administrative review under part 780 of this title, or other applicable appeal procedures, of CCC's determination concerning the existence or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of CCC's initial demand letter, unless a longer period is specified in the initial demand letter.

[56 FR 66956, Dec. 27, 1991]

### **§ 1403.12 Additional administrative collection action.**

Nothing contained in this part shall preclude the use of any other administrative or contractual remedy which may be available to CCC to collect debts owed to the Government.

[56 FR 66956, Dec. 27, 1991]

### **§ 1403.13 Contact with debtor's employing agency.**

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, CCC may contact the employing agency to arrange for payment of the debt by allotment or otherwise, in accordance with section

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206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469.

#### § 1403.14 Prior provision of rights with respect to debt.

CCC will not provide an administrative appeal with respect to issues which were subject to administrative review at the debtor's request as provided under another statute or regulation before:

- (a) Effecting administrative offset;
- (b) Referring the debt to private collection or credit reporting agencies;
- (c) Referring the debt to the Office of Personnel Management (OPM) for salary offset against the current pay of a present or former Government employee; or
- (d) Referring the debt to IRS for tax refund offset.

#### § 1403.15 Discharge of debts.

(a) Except as required by other applicable regulation or statute, a debt or part thereof owed CCC shall be discharged and the records and accounts on that debt closed in the following situations:

- (1) When an obligation or part thereof is discharged in bankruptcy;
- (2) When an obligation or part thereof is the subject of a final judgment entered by a court of competent jurisdiction which is adverse to CCC;
- (3) When a debt or part thereof is compromised and paid, the amount of such compromise;
- (4) When collection of a debt by administrative offset is barred in accordance with §1403.7(s)(5).

(b) A debt or part thereof owed CCC may be discharged and the records and accounts on that debt closed when the Controller, CCC, has determined that such action is in the best interest of CCC.

(c) A claims official or claims officer may discharge a delinquent debt if such debt arises under the terms of the authority delegated to such official or officer in the following circumstances:

- (1) The delinquent debt is owed by an entity which has been liquidated or dissolved and no legal remedy is feasible.
- (2) The delinquent debt is owed by an individual who:
  - (i) Is declared legally insane or incompetent;

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(ii) Possessed of no assets or other means of payment; and

(iii) Possessed of no reasonable prospects of being able to pay the debt in the future.

(3) The delinquent debt was incurred by an individual who is deceased, and from whose estate recovery cannot be made.

(d) Debts discharged in accordance with this section may be reported to the Internal Revenue Service pursuant to §1403.19.

#### § 1403.16 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by CCC and the rights that will be afforded to farm producers when CCC reports delinquent debts to credit reporting agencies.

(b) Before disclosing information to a credit reporting agency in accordance with this part, CCC shall review the claim and determine that it is valid and delinquent.

(c) Before a debt may be referred to a credit reporting agency, the debtor must be notified, pursuant to §1403.4, of CCC's intent to make such a report. Such notification shall include:

(1) CCC's intent to disclose to a credit reporting agency that the debtor is responsible for the debt, and that such disclosure will be made not less than 60 days after notification to such debtor.

(2) The information intended to be disclosed to the credit reporting agency under paragraph (g)(1) of this section.

(3) The debtor's right to enter a repayment agreement on the debt, including, at the discretion of CCC, installment payments, and that if such an agreement is reached, the debt will not be referred to a credit reporting agency.

(4) The debtor's right to review of this action in accordance with paragraph (i) of this section.

(d) The debtor shall be notified, in writing at the debtor's last known address, when CCC has reported any delinquent debt to a credit reporting agency.

(e)(1) CCC shall notify each credit reporting agency to which an original disclosure of delinquent debt information was made of any substantial

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change in the condition or amount of the claim.

(2) CCC shall promptly verify or correct, as appropriate, information about the debt on request of a credit reporting agency. The records of the debtor shall reflect any correction resulting from such request.

(f) Information reported to a credit reporting agency on delinquent debts shall be derived from the system of records maintained by CCC.

(g) CCC shall limit delinquent debt information disclosed to credit reporting agencies to:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

(h) Reasonable action shall be taken to locate a debtor for whom CCC does not have a current address before reporting delinquent debt information to a credit reporting agency.

(i)(1) Before disclosing delinquent debt information to a credit reporting agency, CCC shall, upon request of the debtor, provide for a review of the debt in accordance with §1403.11. This review shall only consider defenses or arguments which were not available or could not have been available at any previous appeal proceeding permitted under §1403.11.

(2) Upon receipt of a request for review within 30 days from the date of notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, CCC shall suspend its schedule for disclosure to a credit reporting agency until a final decision regarding the appropriateness of disclosure to a credit reporting agency is made.

(3) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, the debtor shall be notified of the scheduled date on or after which the debt will be referred to the credit reporting agency. The debtor will also be notified of any changes from the initial notification in the information to be disclosed.

(j)(1) In accordance with guidelines established by the Executive Vice President, CCC, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in paragraph (g) of this section.

(2) The agreements entered into by USDA and credit reporting agencies shall provide the necessary assurances to CCC that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(3) CCC shall not report delinquent debt information to credit reporting agencies when:

(i) The debtor has entered a repayment agreement covering the debt with CCC, and such agreement is still valid; or

(ii) CCC has suspended its schedule for disclosure of delinquent debt information pursuant to paragraph (i)(2) of this section.

(k) Disclosures made under this section shall be in accordance with the requirements of the Privacy Act, as amended (5 U.S.C. 552a).

(l) Notwithstanding the provisions of paragraphs (a) through (k) of this section, all commercial debts owed by debtors other than farm producers may be reported to credit reporting agencies.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66956, Dec. 27, 1991]

### § 1403.17 Referral of debts to Department of Justice.

Debts which cannot be collected in accordance with these regulations may be referred to the Department of Justice for collection action.

### § 1403.18 Referral of delinquent debts to IRS or tax refund offset.

CCC may refer legally enforceable delinquent debts to IRS to be offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

**§ 1403.19 Reporting discharged debts to IRS.**

(a) In accordance with IRS regulations, CCC may report to IRS as discharged debts on IRS Form 1099-G only the amounts specified in paragraph (b) of this section.

(b) The following discharged debts may be reported to IRS:

(1) The amount of a debt discharged under a compromise agreement between CCC and the debtor, except for compromises made due to doubt about the Government's ability to prove its case in court for the full amount of the debt.

(2) The amount of a debt discharged by the running of the statutory period of limitation for collecting the debt by administrative offset specified in 31 U.S.C. 3716.

(3) The amount of a debt discharged by CCC in accordance with § 1403.15(b).

**§ 1403.20 Referral of debts to private collection agencies.**

If CCC's collection efforts have been unsuccessful after 90 days and the delinquent debt remains unpaid, CCC may refer the debt to a private collection agency for collection.

**§ 1403.21 Collection of 1988 and 1989 advance deficiency overpayments.**

(a) The provisions of this section set forth the policies and procedures for collection of 1988 and 1989 advance deficiency overpayments ("overpayments").

(b) The following definition shall be applicable to this section:

*Financial hardship* means that condition of a producer in which payment of the debt by lump sum would jeopardize the producer's ability to provide food, shelter, and medical care to his immediate family, or to continue the producer's farming operation, as determined by CCC.

(c) This section applies to collection of overpayments from those producers who are suffering financial hardship, as determined by CCC, and who also meet the following conditions, as determined by CCC:

(1) Who received an advance deficiency payment for the 1988 or 1989 crop of a commodity under part 1413 of this chapter;

(2) Who are required to provide a refund of at least \$1,500 of such payment, as a result of the increase in market prices of the commodity;

(3) Who reside in a county, or in a county that is contiguous to a county where CCC has determined that farming, ranching, or aquaculture operations have been substantially affected as evidenced by a reduction in normal production for the county of at least 30 percent during two of the three crop years 1988, 1989, and 1990 by:

(i) A natural disaster designated by the Secretary of Agriculture;

(ii) A major disaster or emergency designated by the President under the Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*);

(4) Where the total quantity of the 1988 or 1989 crop of the commodity that the producers were able to harvest is less than the result of multiplying 65 percent of the farm payment yield established CCC for the crop by the sum of the acreage planted for the harvest and the acreage prevented from being planted (because of the disaster or emergency referred to in paragraph (c)(3) of this section) for the crop; and

(5) Who have applied to the County Farm Service Agency Office which issued the advance deficiency payment, no later than May 31, 1991, for a determination of eligibility for the repayment provisions of this section.

(d) CCC shall assess interest on delinquent debts for 1988 or 1989 overpayments as follows:

(1) CCC shall establish a regional annual interest rate for each of 12 geographic regions, corresponding to the extent practicable, as determined by CCC, with the 12 geographic districts of the Farm Credit System.

(2) Each regional annual interest rate shall not exceed the average of the interest rates charged by Farm Credit System institutions within the region to high-risk borrowers on 1-year operating loans, as determined by CCC based upon information provided to CCC by the Farm Credit System.

(3) Interest shall accrue at the established regional annual interest rate for the region in which the debt arose, beginning November 28, 1990.

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(e) CCC shall not offset, in each of the crop years 1990, 1991, and 1992, more than  $\frac{1}{3}$  of the farm program payments otherwise due a producer, as a result of the producer's delinquency in repaying the overpayment.

(f) CCC shall permit producers to repay the overpayment in three equal installments during each of the crop years 1990, 1991, and 1992, if the producers document to CCC that they have entered into agreements to obtain multiperil crop insurance policies for the 1991 and 1992 crop years.

[56 FR 32319, July 16, 1991]

### PART 1404—ASSIGNMENT OF PAYMENTS

Sec.

1404.1 General statement.

1404.2 Definitions.

1404.3 Payments which may be assigned.

1404.4 Execution of assignment form.

1404.5 [Reserved]

1404.6 Payment to the assignee.

1404.7 Misrepresentations.

1404.8 Liability of the Secretary or disbursing agents.

1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 590h(g).

SOURCE: 54 FR 52883, Dec. 22, 1989, unless otherwise noted.

#### § 1404.1 General statement.

This part sets forth the manner in which a person may assign a cash payment which is made by the Farm Service Agency (FSA) or the Commodity Credit Corporation (CCC). Such payments may only be assigned in the manner set forth in this part.

#### § 1404.2 Definitions.

(a)(1) *Assignee* means any person, including any agency of the Federal Government, to whom an assignment of an FSA or CCC payment is made in accordance with this part.

(2) *Assignor* means any person who is the recipient of a payment from FSA or CCC who assigns the payment to another person in accordance with this part.

(3) *Payment* means a cash payment and excludes

(i) Any payment made in accordance with part 1470 of this title;

(i) Price support loan or purchase agreement proceeds; and

(iii) Any payments made in accordance with parts 1487, 1488, 1491, 1492, and 1493 of this title.

(b) The terms defined in parts 719, 1413, 1421 and 1427 shall also be applicable to this part.

#### § 1404.3 Payments which may be assigned.

Except as otherwise provided in this part or in individual program regulations, contracts and agreements entered into by FSA or CCC, any payment due a person from FSA or CCC may be assigned.

[54 FR 52883, Dec. 22, 1989, as amended at 56 FR 361, Jan. 4, 1991]

#### § 1404.4 Execution of assignment form.

(a)(1) The assignment of any FSA or CCC payment must be made by the execution of Form CCC-36 or Forms CCC-251 and CCC-252. Form CCC-36 is applicable to payments made under programs administered in accordance with 7 CFR parts 701, 704, 1413, 1430, 1468, 1472 and 1475. Such form is also applicable to any other program which is administered by a county ASC committee. Forms CCC-251 and 252 are applicable to all other CCC or FSA programs and contracts.

(2)(i) To be recognized by FSA or CCC, Form CCC-36 must be filed in the county FSA office prior to the time the county committee approves the making of the payment covered by the assignment. To be recognized by FSA or CCC, Forms CCC-251 and 252 must be filed with the FSA or CCC office from which the payment will be made prior to the making of the payment.

(ii) Form CCC-36 or Forms CCC-251 and 252 must be signed by both the assignor and the assignee.

(3) The assignor and the assignee shall promptly notify the appropriate FSA or CCC office of any change affecting the assignment.

(b) [Reserved]

[54 FR 52883, Dec. 22, 1989, as amended at 56 FR 361, Jan. 4, 1991]